

QUESTION 1
(One Hour)

Alice owns a famous horse stable. Two years earlier, her horse, “Cash ‘Em In” ran third in the Kentucky Derby.

In late November, Alice receives a letter from another stable owner with many famous race horses, Bart, asking how much she wanted for Cash ‘Em In. She called him and left a voice mail stating that the horse was “not for sale; I intend to keep racing him myself until he gets too old---after that I’ll consider licensing him to you in the ordinary way as a stud.” Bart called Alice up on the phone and said he understood her position but he would buy the horse at whatever price Alice specified. Alice figured Bart had a reputable stable and, if she could get a good price and arrange payments over time (for tax purposes) she would sell.

On December 22 Alice leaves Bart another voice mail message stating, “I think your stable will be a good home for Cash ‘Em In and therefore I accept your offer. I will sell you Cash ‘Em In for \$1,200,000 payable in twelve equal monthly payments, commencing January 2, 2018 and ending on December 31, 2018. I will be gone for the holidays so, if interested, bring your first \$100,000 check to my stable on January 2, 2018 and you can pick him up then. I will provide ownership papers when all 12 payments are completed.” Bart calls back and leaves a message, saying “I received your message. I look forward to meeting you at the stable on January 2 at 11 in the morning.”

On January 1, Bart loses a \$50,000 Rose Bowl bet and his bookie (Guido) implies that Bart will suffer bodily injury unless he makes immediate payment. Bart knows of a local tycoon, Lucky, who might be able to help him out. Bart plays Lucky the various voice mail messages from Alice concerning Cash ‘Em In. Lucky agrees that he’ll pay Bart’s debt to Guido in exchange for Bart signing a document stating: “I hereby transfer to Lucky my right to buy Cash ‘Em In from Alice.” Bart orally agrees that he will appear at the stable on January 2, but that Lucky will be there too with a horse trailer to help transfer the horse.

At 11 in the morning on January 2, Lucky came to the stable, but Bart does not appear. When Alice asks who Lucky was he gave her his business card and shows her the document signed by Bart. He offers her a check, but before accepting it Alice remembered where she had seen Lucky’s name before. Alice recalled reading an article in People magazine talking about the museum that Lucky owned where he was trying to buy famous horses so they could be euthanized, stuffed and become part of a permanent exhibit devoted to horse racing.

Alice was outraged at the thought of “putting to sleep” such a prime animal. She was also horrified at what the sale might do to her reputation as a breeder. Alice protested

that she would not accept his money if Lucky planned on putting Cash 'Em In in his museum. Lucky responded, "Lady, a deal is a deal."

Discuss the rights and remedies, if any, of Lucky.

QUESTION 2
(One Hour)

Father lived in a house next door to his adult son, Sonny. Father contracted with Tubs to construct a swimming pool on Father's lot in back of his home, the price to be Tubs' cost plus 15%. Tubs estimated that the total cost to Father would be \$50,000. Father told Tubs that he had no interest in swimming and that his purpose was to make the use of the pool a gift to Sonny.

After Tubs was half finished with construction of the pool, he sent Father a "50% progress payment" invoice for \$25,000. Father refused to pay it since he did not recall any agreement for progress payments; in fact, there was no discussion at all about payment times. When Father reminded Tubs there was no discussion of progress payments, Tubs stated that it was normal in his field to get a 50% progress payment, and that he would not return unless he received payment. Father called his lawyer, who wasn't in. Frustrated, Father told Tubs he would not make the payment and decided he may not build a pool after all.

When Sonny discovered that Father was considering not building the pool, Sonny told Father that he would take over Father's contractual liability for the pool and would see that it was completed. Father said, "Fine, but you deal with Tubs." Sonny called Tubs and said he would be liable for Father's contract. Tubs agreed. Tubs then sent Sonny the 50% progress payment invoice.

The next day, Sonny and Father discovered that the work Tubs had done on the pool was defective and therefore not worth its pro-rata contractual value. Sonny estimated that the amount to repair the defects was approximately \$10,000. Sonny and Father insisted that Tubs correct the defects and complete performance of the contract. Tubs, after having his friend look at his work, replied, "The work I did was fine. Plus, you haven't paid me what I am owed. I will have nothing further to do with this job." Tubs removed all of his tools and supplies from the site.

Tubs' lawyer later sent Sonny and Father a bill for \$25,000 for the work done and also claims Tubs is entitled to lost profits for the rest of the job, which he claims is another \$25,000.

Discuss the rights and liabilities of Sonny, Tubs and Father.